IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

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No. 94-60115
Summary Calendar
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RENEE SHAWHAN, ET AL.,

Plaintiffs-Appellants,

versus

MCALLEN INDEPENDENT SCHOOL
DISTRICT, ET AL.,

Defendants-Appellees.

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Appeal from the United States District Court for the
Southern District of Texas
(CA M93-117)
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(August 31, 1994)

Before GARWOOD, HIGGINBOTHAM and DAVIS, Circuit Judges.*

PER CURIAM:

The Board of Trustees of the McAllen Independent School District (the district) on December 14, 1992, adopted a resolution reciting that this Court's decision in *Jones v. Clear Creek Independent School District*, 977 F.2d 963 (5th Cir. 1992), *cert.*

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* Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

denied, 113 S.Ct. 2950 (1993), held "that a resolution of a school district, permitting public high school seniors to elect to choose a student volunteer to deliver a non-sectarian, non-proselytizing invocation and/or benediction at their graduation ceremony, did not violate the United States Constitution." The resolution also asserted that the district board of trustees "desires to adopt this type of resolution." The resolution provided that "use" of an invocation and/or benediction at high school graduations "shall, with the advice and counsel of the principal of that high school, rest within the discretion of the graduating senior class of that high school," and if used "shall be given by a student volunteer," and "shall be non-sectarian and non-proselytizing in nature."

On April 13, 1993, the superintendent of the district, Jose A. Lopez (Lopez), issued a written memorandum to district high school principals respecting the resolution. The memorandum states that "prayers must be non-sectarian and non-proselytizing" and that "specific references to Jesus Christ, Mohammed, etc., are considered sectarian in nature." This memorandum also states "[i]t is not the intent of the resolution that the principal review and/or approve the planned prayer. Neither the principal or the teacher sponsor should review and/or approve the prayer." The graduating senior class at two high schools within the district, McAllen High School and Memorial High School, voted to include invocatory and benedictory prayers in their respective graduation ceremonies. Renee Shawhan (Shawhan) was a graduating senior at McAllen High School, and Stephen Sutton (Sutton) and Rachel Evans (Evans) were graduating seniors at Memorial High School, and these

three students volunteered, and were selected by their respective senior graduating classes, to be the students who would deliver the invocation and benediction prayers at their respective graduation ceremonies. On May 27, 1993, Shawhan, Sutton (individually and through his parents as next friends), and Evans (individually and through her parents as next friends) filed this suit in the district court below against the district and Lopez seeking a declaratory judgment that so far as the district or its resolution and Lopez's memorandum would prohibit references in the graduation ceremony prayers to Jesus, references which plaintiffs desired to make, such violated plaintiffs' constitutional rights; also sought were unspecified actual and nominal damages, attorney's fees, and costs. Plaintiffs further requested injunctive relief, including a temporary restraining order, preliminary injunction, and permanent injunction. The suit was not a class action.

The district court denied the temporary restraining order. The graduation exercises were held as scheduled on May 27 and May 28, 1993. It is undisputed that plaintiffs were allowed to give and did give the prayers they desired to give. It also appears undisputed that plaintiffs graduated in May 1993 from their respective high schools and were never disciplined or otherwise disadvantaged by the district or Lopez on account of their intent to give and/or giving their prayers as desired at the ceremonies. It also appears undisputed that, consistent with Lopez's April 13, 1993, memorandum, no official of the school district ever reviewed the prayers plaintiffs wanted to, and ultimately did, give, and never specifically approved or disapproved those particular

prayers.

Subsequently, various motions to dismiss and opposition thereto, with supporting affidavits, were filed, and non-evidentiary hearings thereon were held by the district court. On January 28, 1994, the district court dismissed the case. The district court concluded, among other things, that the case was moot because the plaintiffs had graduated, had delivered the desired prayers at the graduation exercises, and had never been disciplined. Plaintiffs bring this appeal.

We agree with the district court in this respect. Because plaintiffs were allowed to and did deliver the prayers they wanted to at the graduation ceremonies, and were never disciplined in regard thereto, their constitutional rights have not been violated, and hence they are not entitled to even nominal damages.[1] Because all the plaintiffs graduated from high school in May 1993, declaratory and injunctive relief is moot, as plaintiffs since May 1993 have not had any relationship to the district or Lopez. The capable of repetition, yet evading review exception to the mootness doctrine is not applicable because that exception applies only where there is "a reasonable expectation that the *same complaining party* would be subject to the same action again." *Weinstein v. Bradford*, 96 S.Ct. 347, 349 (1975) (emphasis added). Plaintiffs' reliance on our decision in *Walsh v. Louisiana High School Athletic Association*, 616 F.2d 152 (5th Cir. 1980), *cert. denied*, 101 S.Ct.

[1] We are not saying plaintiffs had or did not have a constitutional right to deliver those prayers at the graduation ceremonies; we are merely holding that if, as they claim, they had such a right, then it was not violated.

939 (1981), in this respect is misplaced. There we held that the suit was not moot despite the fact that the originally-named minor plaintiffs had completed the ninth grade and thus were no longer subject to the terms of the challenged restraint. Our holding, however, was based on the fact that "the plaintiff parents had other minor children who currently were enrolled" at lower schools within the relevant district and "the district court reasonably could expect that the same complaining parties again would be subject to the challenged action in the future." *Id.* at 157. Here, by contrast, nothing in the record suggests that the parents of any of the student plaintiffs have any other children at all, let alone any others attending, or who might attend, school in the district. Further, in the present case the parents are named only as next friends of the named students, and not otherwise or in their own right as parents. The only plaintiffs are the named students. *See also Steele v. Van Buren Public School District*, 845 F.2d 1492, 1495 (8th Cir. 1988) (suit by mother as parent and as next friend of her three daughters, all of whom attended school in the defendant district, became moot as to the claim of the oldest daughter on that daughter's graduation from high school, but was not moot as to the claims of the mother and the other two daughters).

Accordingly, the district court's dismissal of the suit on the foregoing basis is affirmed for the reasons stated.

AFFIRMED